



Armand Pereira
Director
Washington Office
International Labor Organization

Congressional Human Rights Caucus

Briefing:

**Human Rights and Brand Accountability -
How Multinationals can Promote Labor Rights**

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The changing importance of multinational enterprises in respecting, promoting and realizing international labor standards¹

Armand F. Pereira²

Introduction

To what extent MNEs - as a group of entities - promote or hinder ILS?

This question has been recurrently analyzed, but there is lack of conclusive information today. There is, however, a lot of case study type of information on so-called “best practices” as well as “bad practices” of MNEs on respecting and promoting ILS and other basic human rights and environment standards. One can dwell in such information, but will not end up with a comprehensive answer. Even so, one can hope that constructive discussions of individual experiences, can help identify actions by different stakeholders to improve the levels of compliance with ILS along with other business performance standards.

To be fruitful, however, such discussions require a clear understanding of the typology of ILS and their growing importance for MNEs. These two sets of issues are the focus of this paper, which is presented as a supplement to a briefing to the United States Congressional Human Rights Caucus (CHRC).

The case for ILS

An already large and growing body of literature has addressed the case for international labor standards (ILS) from ethical, economic and business perspectives: Why are they necessary; which are essential; which are less essential, but relatively necessary and desirable; what do they contribute to sustainable business performance, to trade, and social and economic development; what are the roles of the ILO and other agencies of the UN system, of international and national financial institutions, private entities engaged in ILS accreditation, certification and monitoring, employers’ and workers’ organizations, as well as multinational enterprises (MNEs) engaged in codes of practice, social labeling, joint public-private ventures, etc.

All the above issues have evolved quickly in the last twenty years. However, the basic international debate over ILS and labor law dates back to well over 100 years, and was indeed the main factor leading to the creation of the ILO in 1919. Among its major functions, the ILO developed its standard setting and supervisory machinery. This

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² Director, ILO Washington Office, 1828 L St. NW, Washington, DC 20036, Tel. 202-653-7652, www.ilo.org/washington (upcoming website under revision).

includes the adoption and application of ILO Conventions (treaties) and Recommendations covering many different labor issues. Once ratified, Conventions are expected to be reflected in national laws and member States expected to make effective progress in their application.

Different floors of ILO's ILS

a) The minimum floor of “core” ILS

Since the Social Development Summit in Copenhagen in 1995, global leaders have recurrently addressed the relationship between core ILS and trade and development. Through that process, it has been increasingly recognized that trade liberalization and other dimensions of globalization (including cross-country mobility of capital and enterprises) - to be sustainable - must endorse at least a minimum level playing field, which includes a universally acceptable floor of standards in the areas of basic human rights, labor rights, environment and, more recently, anti-corruption, as reflected in the United Nations' Global Compact among other instruments and many MNE codes of practice.

Another major development is the growing pressure to include conditionality in international lending with regard to ILS and the other abovementioned categories of standards. As a result, in February 2006, the International Finance Corporation (the private lending arm of the World Bank Group) will seek approval by its Board of the IFC's *Policy and Performance Standards on Social & Environmental Sustainability*. If approved this could mean that IFC's lending operations will expect IFC clients to make commitments to respect ILO's core labor standards.

In addition to - and not in substitution of - the ILO's member States' obligations to ensure the application of ratified conventions the ILO's core labor standards (also referred to in the ILO as “fundamental Conventions” are grouped together in the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow Up (1998)* endorsed by the ILO member States.

The ILO Declaration commits member States (thus, also their companies and citizens/residents) “to respect, to promote and to realize in good faith” a universally accepted floor of core labor standards in four categories. These categories are: “ (a) freedom of association and the effective recognition of the right to collective bargaining, (b) the elimination of forced or compulsory labor, (c) the abolition of child labor and (d) the elimination of discrimination in respect of employment and occupation”. These are covered by eight treaties of the ILO.³

3. Convention Concerning Freedom of Association and Protection of the Right to Organize (No. 87), 9 July 1948, 68 U.N.T.S. 16 (entered into force July 4, 1950) (145 ratifications); Convention Concerning the Application of the Principles of the Right to Organize and to Bargain Collectively (No. 98), 1 July 1949, 96 U.N.T.S. 257 (entered into force 18 July 1951) (154 ratifications); ILO Convention Concerning the Abolition of Forced Labor (No. 105), 25 June 1957, 320 U.N.T.S. 291 (165 ratifications); ILO Convention Concerning Forced or Compulsory Labor (No. 29), 28 June 1930, 39 U.N.T.S. 55 (168 ratifications); Convention Concerning Discrimination in Respect of Employment and Occupation (No. 111), 25 June 1958, 362 U.N.T.S. 31 (entered into force 15 June 1960) (164

The Declaration makes it clear that “these rights are universal”, and that they “apply to all people in all member States - regardless of the level of economic development”. The Declaration also stresses that “labor standards should not be used for protectionist trade purposes, and that nothing in the Declaration and its follow-up shall be invoked or otherwise used for such purposes; in addition, the comparative advantage of any country should in no way be called into question by this Declaration and its follow-up.” The commitment to the Declaration is supported by a Follow-up procedure which is an integral part of the Declaration itself.⁴

The above minimum floor of core ILS is endorsed in the ILO’s Decent Work Agenda and reflected in several free trade agreement negotiations.

b) Higher floors of ILS

Many entities, including unions as well as employers’ organizations, labor rights advocates and many enterprises, find the above minimum floor of core labor standards too low for a variety of reasons ranging from national law requirements, employee and peer pressure, employee satisfaction, motivation and productivity, safety considerations even where national laws and enforcement are weak in this area, etc.

The rights to a fair minimum wage and to a safe and healthy workplace were proposed to be included as core (“fundamental”) rights in the ILO’s 1998 Declaration, but were rejected by employer groups. Yet, a strong case could be made to upgrade these rights to fundamental status. “Both fair wages and health and safety are recognized as human rights in the Universal Declaration and the ICESCR. Both rights obviously are contingent on a country’s level of

ratifications); Convention Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (No. 100), 29 June 1951, 165 U.N.T.S. 303 (entered into force 23 May 1953) (162 ratifications); Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No. 182), adopted 17 June 1999 (158 ratifications); Convention Concerning Minimum Age for Admission to Employment (No. 138), 26 June 1973, 1015 U.N.T.S. 297 (entered into force 19 July 1976) (143 ratifications). Ratification information available from the ILO website, < <http://www.ilo.org/ilolex/english/index>.

4 Based on article 19 paragraph 5 (e) of the ILO Constitution, the governments of the member States which have not yet ratified all the fundamental Conventions have to file annual reports to the ILO on the status of the relevant rights and principles within their borders, noting impediments to ratification, and areas where assistance may be required. This reporting process provides Governments with an opportunity to state what measures they have taken towards achieving respect for the Declaration. It also gives organizations of employers and workers a chance to voice their views on progress made and actions taken. These annual reports are compiled by the ILO and reviewed by the Committee of Independent Expert Advisers (not related to ILO’s regular standards supervisory bodies). In turn, their observations are considered by the ILO’s Governing Body. The Declaration Follow Up also includes a Global Report each year providing a dynamic global picture of the current situation of the principles and rights expressed in the Declaration. Each of four principles covered by the Declaration is analyzed in rotation once every four years. The Global Report is an objective overview of the global and regional trends on the issues relevant to the Declaration and serves to highlight priorities requiring greater attention. It serves as a basis for determining priorities for technical cooperation. Technical cooperation projects, the third way to give effect to the Declaration, are designed to address identifiable needs in relation to the Declaration and to strengthen local capacities thereby translating principles into practice.

development, but both also surely have a relative baseline below which it should be unacceptable for any country to fall.”⁵ All workers ought to qualify for protection from hazardous working conditions, especially where there are high risks of accidents and contamination.

The vast majority of MNEs and a growing number of national companies engaged in international outsourcing also endorse higher floors of ILS. A number of private accreditation and certification entities are playing an increasingly important role in this context.

For example, the Fair Labor Association (FLA) has a workplace code of conduct, based on ILO’s ILS, “which brand-name MNEs sign and agree to implement throughout their supply chains. The Participating Companies (PCs), as they are known, agree to inform managers and workers of the code, train their own staff in the standards, internally monitor their production facilities to assess the degree of compliance and to deal with non-compliance within 60 days. The FLA then conducts independent external monitoring of a random sample of those facilities to ensure that the PC is implementing its compliance program.”⁶

The Social Accountability International (SAI) functions differently from FLA. It has a certification known as “SA8000” which includes 11 ILO Conventions plus the Universal Declaration of Human Rights and two other UN Conventions. SAI accredits entities that in turn provide certifications. There are currently (Jan 2006) 763 SA8000 certified facilities in 47 different countries and 54 different industries.

⁵ This quote and related argument in this paragraph is from Sarah H. Cleveland: Why international labor standards?, paper presented at ILO Seminar on Challenges and Perspectives for increasing the relevance of international labor standards (Geneva, 23-24 May 2002).

⁶ Aurret van Heerden: International labor standards: How international and how standard?, paper presented at ILO Seminar on Challenges and Perspectives for increasing the relevance of international labor standards (Geneva, 23-24 May 2002).

Table 1. ILO standards included in SA 8000

- ILO Conv 29 e 105 (Forced labor)
 - ILO Conv 87(Freedom of association)
 - ILO Conv 98 (Right to collective bargaining)
 - ILO Conv 100 (Equal remuneration for equivalent work of men and women)
 - ILO Conv 111 (Discrimination at work)
 - ILO Conv 135 (Workers representatives)
 - ILO Conv 138 & Rec 146 (Minimum working age and related Rec)
 - ILO Conv 155 & Rec 164 (Occupational Safety and health)
 - ILO Conv 159 (Vocational rehabilitation and employment –persons with disabilities)
 - ILO Conv 177 (homework)
 - ILO Conv 182 (Worst forms of child labor)
 - Universal Declaration of human rights
 - UN Conv on Children’s rights
 - UN Conv to eradicate all forms of discrimination against women
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The Forestry Stewardship Council (FSC) is an international, non-governmental organization dedicated to promoting responsible management of the world's forests. It also uses a practice of accreditation to assess and issue product-labeled certifications which include, *inter alia*, most of the ILS endorsed by SAI.

In the United Kingdom, the Amnesty International, Oxfam, and CORE Coalition are examples of many entities in the world today that have added labor standards advocacy and monitoring to their core business.

The ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy 1977 (revised 2000) and the OECD Guidelines on MNEs (1976) cover an even higher number of ILO standards than SAI. They are both voluntary codes. The OECD Guidelines are intended to act as a reference point for the foreign operations of multinational companies based in OECD countries.

Adopted in 1977 and revised in 2000, the Tripartite Declaration refers to 17 Conventions and 19 Recommendations of the ILO. It therefore provides a platform of labor standards, above the minimum floor covered by the Declaration of Fundamental Principles and Rights at Work and its Follow Up (1998).

Table 2. International labor Conventions and Recommendations referred to in the ILO Tripartite Declaration of Principles

- Conv (No. 29) concerning Forced or Compulsory Labor, 1930.
 - Conv (No. 87) concerning Freedom of Association and Protection of the Right to Organize, 1948.
 - Conv (No. 98) concerning the Application of the Principles of the Right to Organize and to Bargain Collectively, 1949.
 - Conv (No. 100) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, 1951.

 - Conv (No. 105) concerning the Abolition of Forced Labor, 1957.
 - Conv (No. 110) concerning Conditions of Employment of Plantation Workers, 1958.
 - Conv (No. 111) concerning Discrimination in Respect of Employment and Occupation, 1958.
 - Conv (No. 115) concerning the Protection of Workers against Ionizing Radiations, 1960.
 - Conv (No. 119) concerning the Guarding of Machinery, 1963.
 - Conv (No. 122) concerning Employment Policy, 1964.
 - Conv (No. 130) concerning Medical Care and Sickness Benefits, 1969.
 - Conv (No. 135) concerning Protection and Facilities to be Afforded to Workers' Rep's in the Undertaking, 1971.
 - Conv (No. 136) concerning Protection against Hazards of Poisoning arising from Benzene, 1971.
 - Conv (No. 139) concerning Prevention and Control of Occupational Hazards caused by Carcinogenic Substances and Agents, 1974.
 - Conv (No. 142) concerning Vocational Guidance and Vocational Training in the Development of Human Resources, 1975.
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 - Rec (No. 35) concerning Indirect Compulsion to Labor, 1930.
 - Rec (No. 69) concerning Medical Care, 1944.
 - Rec (No. 90) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, 1951.
 - Rec (No. 92) concerning Voluntary Conciliation and Arbitration, 1951.
 - Rec (No. 94) concerning Consultation and Cooperation between Employers and Workers at the Level of the Undertaking, 1952.
 - Rec (No. 110) concerning Conditions of Employment of Plantation Workers, 1958.
 - Rec (No. 111) concerning Discrimination in Respect of Employment and Occupation, 1958.
 - Rec (No. 114) concerning the Protection of Workers against Ionizing Radiations, 1960.
 - Rec (No. 115) concerning Workers' Housing, 1961.
 - Rec (No. 116) concerning Reduction of Hours of Work, 1962.
 - Rec (No. 118) concerning the Guarding of Machinery, 1963.
 - Rec (No. 119) concerning Termination of Employment at the Initiative of the Employer, 1963.
 - Rec (No. 122) concerning Employment Policy, 1964.
 - Rec (No. 129) concerning Communications between Management and Workers within the Undertaking, 1967.
 - Rec (No. 130) concerning the Examination of Grievances within the Undertaking with a View to their Settlement, 1967.
 - Rec (No. 134) concerning Medical Care and Sickness Benefits, 1969.
 - Rec (No. 144) concerning Protection against Hazards of Poisoning arising from Benzene, 1971.
 - Rec (No. 147) concerning Prevention and Control of Occupational Hazards caused by Carcinogenic Substances and Agents, 1974.
 - Rec (No. 150) concerning Vocational Guidance and Vocational Training in the Develop't of Human Resources, 1975. -
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Push for MNE regulation (1960s-1980s)

Since the 1940s, the number of MNEs had increased dramatically, reaching some low-side estimate of about 70,000 by 2004 according to UNCTAD information. The call for regulation from different groups increased through the 1960s and 1970s.

By 1977, the United Nations Centre for Transnational Corporations (UNCTC) was created and the Organization for Economic Development (OECD) had produced the OECD Guidelines for Multinational Enterprises. These Guidelines focused mainly on corporate governance, but addressed employment, labor relations, the environment and consumer relations. In addition, the abovementioned ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy drew, as seen above, on a wide range of ILO conventions and recommendations on different labor issues.

The ILO's unique tripartite structure (with representation from governments, employers' and workers' organizations) facilitated agreements to access progress in working conditions associated with increased MNE activities across countries.

The Tripartite Declaration's "Addendum" (adopted in 1987 and revised in 1995 and 2000) have provided a base for many initiatives by governments, enterprises, and workers' organizations, including codes of conduct, private accreditation and certification instruments, and works councils, etc. The ILO's worldwide constituents, be they home bases or hosts for MNEs, report to the ILO's Governing Body every three years on the effect given to the Declaration.

The UNCTC further attempted to seek support for a Draft Code of Conduct for Transnational Corporations.

Push for MNE self regulation (1990s): Emergence of corporate social responsibility

By 1992, the UNCTC proposal had been dropped. New proposals for corporate self-regulation were brought forward with increased support from organizations, such as the International Chamber of Commerce (ICC), the Business Council for Sustainable Development (BCSD) and others.

By 1993 the UNCTC had been dismantled. This appears to have been a landmark in the push for enterprise self-regulation and the rapid emergence of corporate social responsibility (CSR).

CSR has thus become a central topic in the context of globalization and governance debates. Employer and worker organizations as well as governments and ILS accreditation and certification entities are increasingly calling on the ILO to provide information, advice and training in the application of ILS which are linked to CSR in the workplace.⁷

⁷ The ILO is one of the core agencies participating in the UN Secretary-General's Global Compact. CSR initiatives can make a significant contribution to the promotion of decent work since they often seek to apply ILS at the workplace level. In recent years, a number of ILO programs work on CSR issues. In the Employment Sector the Management and Corporate Citizenship program (MCC), the Multinational Enterprises program (MULTI), the Social Finance program (SFP) and IFP/SEED cover such aspects as supply-chain management, total responsibility management, ILS for managers, non-discriminatory

a) From philanthropy to a gradually more coherent CSR policy and culture

There is no shortage of good will and good behavior among MNEs, including above average pay in many cases, or a wide variety of social investments (especially where attractive tax breaks are offered). Desirable and useful as it may be, philanthropy has been increasingly distinguished from acceptable core definitions of corporate social responsibility (CSR). Although one finds in the literature different definitions and components of CSR, this means in essence, that enterprises choose to behave ethically or responsibly towards their internal and external employees, suppliers, clients as well as their internal and external physical environment, including low polluting technology, etc.. Explicit reference is often extended also to responsible fiscal practices, abstention from corruption, etc.⁸

Key CSR objectives are mainly to increase or preserve profitability together with overall conditions of work and standards of living for the stakeholders inside and outside the company. In other words, CSR is a coherent package of principles guiding internal and external relations and not just a selective behavioral goodness for a specific group, or simply to meet a temporary objective.

b) From ILS selectivity to an ILS package approach in CSR

management practices, the Global Compact, the Tripartite Declaration on Multinational Enterprises and Social Policy, socially responsible investment and job quality in small enterprises. In the Standards Sector, IFP/DECLARATION provides support in respect of the Global Compact, IPEC works with enterprises and enterprise associations to eliminate child labor and EGALITE works on discrimination issues. In the Social Protection Sector, SAFE WORK and HIV/AIDS work with employers on occupational safety and health issues and to promote the application of the HIV/AIDS Code of Practice. In the Social Dialogue Sector, ACT/EMP has organized a number of activities around the Global Compact, particularly in Asia. ACT/EMP, ACTRAV and IFP/DIALOG are also dealing with the social dialogue aspects of CSR, while most sectoral meetings now include a paper on CSR in the sector concerned. (ILO: Decent Work and Corporate Social Responsibility, ILO/GB paper, 2003.) A number of CSR related activities were carried out in Brazil 1998-2005 in partnership with the Ethos Institute and other organizations including development of CSR indicators, agreements against forced labor and child labor and to promote diversity and non-discrimination in the workplace.

⁸ For example, according to Michael Hopkins: *The Planetary Bargain: Corporate Social Responsibility Matters*, Earthscan, London, UK, 2003., *CSR components may include*: "adherence to an appropriate set of Good Corporate Governance Principles..., long-term view of investment and profitability; socially responsible products; code of ethics of company operations; having a comprehensive CSR policy to ensure effective implementation; local community support where plants are located; refraining from transfer pricing; relatively high proportion of workforce in regular protected employment; internally flexible labor practices; non-discriminatory recruitment and advancement policy; skill upgrading programs conducted either internally or externally; labor involved in discussions of structural change, plant relocations and closures through labor-management councils; explicit procedures to help employees retrain and relocate in the case of downsizing; open accounting procedures for shareholders and disclosure of relevant information for public at large; support for social investment funds; support to enhance small-scale savings and credit; transfer of technology (for example, management skills)."

By the same token, it has been increasingly expected that CSR includes the compliance with a package of labor standards guiding management-labor relations as opposed to respecting standards on, for example, forced labor and child labor while avoiding, neglecting, or misusing universal ILS on freedom of association, or collective bargaining or discrimination.

c) Self-regulation: risks and opportunities

Self-regulation means some additional risks for companies. They remain exposed to public inspections and complaints on non-compliance with ILS that may be sent up to the ILO's supervisory bodies. In addition, however, they will have made themselves increasingly transparent and monitored by private groups. In a sense, self-regulation may imply, privatization of ILS scrutiny in supplement to (not necessarily instead of) the roles of national law and the ILO's supervisory bodies. This may of course be seen as a risk for some and as an opportunity for others.

Companies are under pressure from consumers, NGOs and socially responsible investment (SRI) funds to show that they take their social and environmental responsibilities seriously. This requires transparency. And "CSR companies" in these conditions can hardly retract back to their pre-CSR management styles.

Some concluding remarks

In recent years the importance of ILS has increased in several ways. First, the ILO supervisory machinery to promote the application of individual ILO Conventions (treaties) has been supplemented by a standards package, which has gained universal importance as a minimum floor of core standards in the debate on globalization: i.e. the *Declaration on Fundamental Principles and Rights at Work and its Follow Up (1998)*.

Secondly, the number of ratifications of these fundamental conventions has increased tremendously ever since.

Thirdly, as MNEs and other enterprises have sought self-regulation hoping to reduce public scrutiny from national and international agencies, they have had, in fact, to become more transparent and more responsive to pressures from consumers, suppliers, local community residents and even employees. This has increased concern over good vs. bad visibility and image, multiple stakeholder satisfaction, SRI-related rankings, in turn, generating significant demand for ILS information, advice and training, private certifications, etc.

Fourthly, the resulting rise in importance of private entities that promote CSR initiatives among enterprises, including SAI, FLA, Global Fairness International (GFI), FSC and many others, is a bonus to ILO in several ways. They promote the ILO's standards and ILO's visibility. They supplement the ILO's standard supervisory role through their own engagement in problem solving. They may also more easily engage directly in workplace monitoring surveys (than the ILO).

Fifthly, the emergence of CSR and its links with ILS have widened the doors for promoting the ILO's Decent Work Agenda, which combines ILS with employment, social protection and social dialogue.

Finally, the recent approval of IFC's *Policy and Performance Standards on Social & Environmental Sustainability* will possibly promote similar developments in international, regional and national financial institutions.